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General Assembly

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Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
Buenos Aires, 4-7 December 2001

Annotated provisional agenda and proposed organization of work

Provisional agenda

1. Opening of the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Consideration of proposals and contributions received from Governments.
5. Adoption of the report of the Informal Preparatory Meeting.

Annotations

1. Opening of the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption

In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (Assembly resolution 55/25, annex I), was desirable; decided to begin the elaboration of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention; and also decided to establish an ad hoc committee for the negotiation of such an instrument to start its work in Vienna as soon as the draft terms of reference for such negotiation were adopted.

Pursuant to resolution 55/61, the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption met in Vienna from 30 July to 3 August 2001. The Intergovernmental Open-Ended Expert Group recommended to the General

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Assembly at its fifty-sixth session, through the Commission on Crime Prevention and Criminal Justice at its resumed tenth session and the Economic and Social Council, the adoption of a draft resolution outlining the terms of reference for the negotiation of the United Nations Convention against Corruption. At its resumed tenth session, held in Vienna on 6 and 7 September 2001, the Commission on Crime Prevention and Criminal Justice approved the report of the Intergovernmental Open-Ended Expert Group and the draft resolution contained therein and decided to transmit the report and the draft resolution through the Economic and Social Council to the Assembly for consideration and adoption, as appropriate. In accordance with the draft resolution, the Assembly would accept with gratitude the offer of the Government of Argentina to host an informal preparatory meeting of the ad hoc committee established pursuant to resolution 55/61, prior to its first session.

The Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption will be convened on Tuesday, 4 December 2001, at 10 a.m.

2. Election of officers

In accordance with the draft resolution recommended by the Intergovernmental Open-Ended Expert Group for adoption by the General Assembly, through the Commission on Crime Prevention and the Economic and Social Council, the Assembly would decide that the bureau of the ad hoc committee would be elected by the committee itself and would consist of two representatives from each of the five regional groups. The first session of the Ad Hoc Committee is due to be held in Vienna from 21 January to 1 February 2002.

In view of the pending decision of the General Assembly and the informal nature of the meeting, the Ad Hoc Committee may wish to dispense with the election of a full bureau. Instead, the Ad Hoc Committee may wish to elect a Coordinator and a Rapporteur of its Informal Preparatory Meeting. In taking its decision, the Ad Hoc Committee may wish to take into consideration the established United Nations practice whereby a representative of the host Government assumes the position of Chairman at United Nations meetings.

3. Adoption of the agenda and organization of work

The resources made available to the Ad Hoc Committee for its Informal Preparatory Meeting permit the holding of two plenary meetings per day with interpretation in English, French and Spanish.

The proposed organization of work is contained in the annex to the present document.

4. Consideration of proposals and contributions received from Governments

In its resolution 55/61, the General Assembly requested the Secretary-General to prepare a report analysing all relevant international instruments, other documents and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, at its tenth session, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

In its resolution 55/188 of 20 December 2000, the General Assembly reiterated its request to the Secretary-General, as contained in resolution 55/61, to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption, and invited the expert group to examine the question of illegally transferred funds and the return of such funds to the countries of origin.

On the recommendation of the Commission on Crime Prevention and Criminal Justice at its tenth session, the Economic and Social Council adopted resolution 2001/13, entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds", in which it requested the intergovernmental open-ended expert group referred to in resolution 55/61 to consider, within the context of its mandates, the following issues, inter alia, as possible items of work to be included in the draft terms of reference for the negotiation of a future legal instrument against corruption: (a) strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds derived from acts of corruption, and promoting ways and means of enabling the return of such funds; (b) developing the measures necessary to ensure that those working in banking systems and other financial institutions contributed to the prevention of the transfer of funds of illicit origin derived from acts of corruption, for example, by recording transactions in a transparent manner, and to facilitate the return of those funds; (c) defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption might be a predicate offence in relation to money-laundering; and (d) establishing criteria for the determination of countries to which funds, referred to above, should be returned and the appropriate procedures for such return.

In accordance with the draft resolution recommended by the Intergovernmental Open-Ended Expert Group for adoption by the General Assembly, through the Commission on Crime Prevention and the Economic and Social Council, the Assembly would decide that the ad hoc committee established pursuant to Assembly resolution 55/61 would negotiate a broad and effective convention, which, subject to the final determination of its title, would be referred to as the "United Nations Convention against Corruption"; would request the ad hoc committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, inter alia, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation; would invite the ad hoc committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption, as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session, and in particular on paragraph 1 of Economic and Social Council resolution 2001/13 as resource materials in the accomplishment of its tasks; and would request the ad

hoc committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime.

In preparation for the Informal Preparatory Meeting of the Ad Hoc Committee, the Secretariat invited Governments to submit proposals concerning the substantive content of the draft United Nations Convention against Corruption. As at 20 November 2001, the Secretariat had received proposals and contributions from the Governments of Argentina, Austria, Azerbaijan, France, Japan, Mexico, the Netherlands, Peru, Sri Lanka, Switzerland, Tunisia, Turkey and the United Kingdom of Great Britain and Northern Ireland.

Documentation

Proposals and contributions received from Governments (A/AC.261/IPM/2-13)

Background documents

Report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption (E/CN.15/2001/3 and Corr.1)

Report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption (see A/56/402-E/2001/105)

5. Adoption of the report of the Informal Preparatory Meeting

The Informal Preparatory Meeting is to adopt a report, the draft of which will be prepared by the Rapporteur.

Annex

Proposed organization of work of the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, to be held in Buenos Aires from 4 to 7 December 2001

Date	*Time*	*Item*	*Title or description*
Tuesday, 4 December	10 a.m.-1 p.m.	1	Opening of the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
		2	Election of officers
		3	Adoption of the agenda and organization of work
		4	Consideration of proposals and contributions received from Governments
	3-6 p.m.	4	Continuation of the discussion
Wednesday, 5 December, and Thursday, 6 December	10 a.m.-1 p.m. and 3-6 p.m.	4	Continuation of the discussion
Friday, 7 December	10 a.m.-1 p.m.	4	Continuation and conclusion of the discussion
	3-6 p.m.	5	Adoption of the report of the Informal Preparatory Meeting

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Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
Buenos Aires, 4-7 December 2001

Proposals and contributions received from Governments

Switzerland: proposals and comments on the preparation of a draft United Nations Convention against Corruption

1. The Swiss authorities wish to point out that a number of the elements discussed below were already raised in a statement at the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption, held in Vienna from 30 July to 3 August 2001. Since then, those points have been expanded in the light of the discussions held by the Expert Group and the progress of work in other forums.

2. The following comments are based on the list of indicative elements contained in paragraph 3 of the report of the Meeting of the Intergovernmental Open-Ended Expert Group (A/AC.260/2 and Corr.1).

1. General remarks

3. The drafting of such an instrument by the United Nations will make the fight against corruption a global, rather than a regional, issue. The United Nations should take advantage of the instrument's universal character by adopting an approach that is as multidisciplinary as possible. The challenge of the forthcoming negotiations will be to develop high-level common practices and standards capable of effectively fighting corruption while respecting the diversity of the cultures and legal systems of Member States.

4. At the drafting level, the text of the convention, in particular its preamble, should make explicit reference to general ethical principles, which are the source of the fight against corruption. Such principles include, inter alia, the general objective of good governance, the principles of fairness and equality before the law, the need for transparency in the management of public affairs and the need to safeguard

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integrity. Moreover, it is important to mention the harmful effects of corruption on development and the distortions it creates in economies.

2. Definitions

5. It is essential that the secretariat responsible for the *travaux préparatoires* take into consideration the work of other international organizations, such as the Organisation for Economic Cooperation and Development (OECD), the Organization of American States (OAS) and the Council of Europe. This should be done both in the area of definitions and terminology as well as standards. With regard to general penal provisions and also questions of jurisdiction, liability of enterprises, money-laundering, confiscation or mutual legal assistance, Switzerland wishes to stress the need to draw on the standards consolidated at the multilateral level, in particular those contained in the United Nations Convention against Transnational Organized Crime.

3. Scope

6. With respect to the scope of the future convention, Switzerland considers that the *travaux préparatoires* should take due consideration of the international objectives and standards already in force in other organizations (OAS, OECD and the Council of Europe, for example) and should avoid duplication. Switzerland applies high standards in that area and expects that, as far as possible, the objective of the new United Nations instrument should be to have standards that are at least as high but in any case not lower.

7. The scope of application should reflect a balanced vision of the fight against corruption. Switzerland expects that, in principle, all forms of corruption that constitute a burden to good governance and the political and economic stability of countries, the competitiveness of enterprises, market transparency and the integrity of judicial systems should be dealt with in the convention. In that regard, the scope of application should cover both recognized corruption or corruption among elite groups and petty corruption.

4. Criminalization

8. The future convention should deal with the active and passive corruption of national and foreign public officials and provide for the liability of natural and legal persons.

9. Switzerland strongly believes that the future instrument should reflect the general principles of law and other fundamental rules of democratic legal systems, in particular the presumption of innocence (no reversal of the burden of proof).

5. Preventive measures

10. The establishment of preventive measures should be a key element of the convention. The provisions of the convention and its preamble should deal with the

sources of endemic corruption and make appropriate reference to and, if possible, stress the compulsory nature of all measures to be taken in the area of prevention. Such measures should include:

(a) Establishment of measures and standards that guarantee good governance and the sound and transparent management of public affairs;

(b) Recognition of the social and economic aspects of the problem, in particular the need for the equitable remuneration of civil servants;

(c) The guarantee of freedom of the press;

(d) Development of long-term national strategies to fight corruption and safeguard integrity;

(e) The need for independent judicial systems and oversight bodies.

6. Confiscation and seizure/preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds

11. Switzerland considers that the provisions of the future convention relating to the freezing, confiscation and return of funds derived from acts of corruption should complement the preventive measures and should:

(a) Encourage States parties to the convention to adopt national legislation that permits the seizure and confiscation of funds of illicit origin derived from acts of corruption, including the return of such funds to the States of origin or to other injured parties;

(b) Formally recognize national and international corruption as a predicate offence in relation to money-laundering;

(c) Encourage States parties to the convention to establish, when necessary, the requisite legal bases for the provision of mutual legal assistance necessary for international cooperation in the aforementioned areas. The necessary procedures for that purpose should be in keeping with the principles of reciprocity and dual criminal liability.

7. Liability of legal persons

12. Since offences involving corruption are often committed in and for private enterprises, Switzerland believes that the future universal United Nations instrument should provide explicitly for the criminal liability of legal persons.

8. Promoting and strengthening international cooperation

13. As indicated above, Switzerland considers that the *travaux préparatoires* for a global convention against corruption should be based on the results of the High-level Political Signing Conference for the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, held in Palermo, Italy,

from 12 to 15 December 2000, and take account of and continue the efforts that have been undertaken in the field of international cooperation. Special emphasis should be placed on mutual legal assistance. Switzerland believes that it is important that the convention should intensify multilateral efforts in the field of international cooperation, for example in the area of money-laundering and the necessary connection with the illicit funds of politically exposed persons.

9. Technical assistance

14. The question of technical assistance should concentrate primarily on preventive measures (see also section 4 above). It should consist of assistance in implementing the objectives of the convention. However, it must be stressed that foreign assistance should be secondary and subsidiary to national efforts. Technical assistance, like any other financial assistance, should concentrate on improving local, regional and national judicial systems and national bodies to monitor money-laundering and on establishing independent national entities to safeguard integrity in public management.

15. It should also be pointed out that the principal beneficiaries of reforms, in both the ethical and economic spheres, are, first of all, the local and national authorities of the countries that implement them. Indeed, effective measures to combat corruption benefit primarily the community that applies them. Consequently, the convention should make explicit reference to the primacy of the national self-financing of such measures.

10. Mechanisms for monitoring implementation

16. It is essential that future recommendations and other obligations arising from the adoption of the convention be implemented effectively. In order to ensure follow-up by States parties to the convention, the convention should provide for a mechanism to monitor implementation. Such a mechanism should meet the usual standards of transparency, be kept within reasonable financial limits and create synergies with other recognized monitoring systems, such as those of the Group of States against Corruption (GRECO) of the Council of Europe and OECD. Close and regular cooperation with recognized international non-governmental organizations active in the field of monitoring is also to be recommended.

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Proposals and contributions received from Governments

Japan: Non-paper

I. Overview

1. Corruption is the most serious obstacle to democracy and sound economic development. In order to fight corruption, international cooperation is indispensable. Therefore, the proposed convention should provide for concrete and realistic measures on the basis of those principles.

2. The proposed convention should cover (a) prevention, (b) criminalization and law enforcement and (c) international cooperation. As is stipulated in the draft resolution recommended by the Commission on Crime Prevention and Criminal Justice at its resumed tenth session to be approved by the Economic and Social Council for adoption by the General Assembly,[1] a "multidisciplinary approach" should be the guiding principle of the proposed convention. Therefore, the above-mentioned three pillars are equally important to address the multifaceted aspects of the fight against corruption.

3. The proposed convention should provide not only for international cooperation but also for an effective framework to strengthen each State's capacity to fight corruption, bearing in mind that it is primarily the responsibility of each State to establish and maintain good governance.

II. Points for consideration

A. Prevention

4. As mentioned above, preventive measures are important elements in the proposed convention, as they would ensure a multidisciplinary approach to the complex and multifaceted problem of corruption. These measures, however, should not be imposed on States parties in a categorical manner, but their introduction

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should be encouraged in accordance with each State's basic legal and administrative system, where such measures may contribute to the prevention of corruption.

5. The points listed below should be considered in the preparation of the convention.

1. Management of non-elected general public officials

6. The management of personnel in the public service varies widely from country to country and regulations applied to public officials in general are not necessarily suitable for regulating the conduct of public officials of special categories such as cabinet ministers and ambassadors. Provisions regarding the management of public officials should therefore not be drafted in an excessively rigid manner so as to allow each State party to implement them in an appropriate manner in accordance with its legal and administrative system.

7. By the same token, it would not be appropriate for the convention to require non-elected public officials to disclose their income, assets and debts, for reasons of practicality and privacy.

8. On the basis of this proposal, the following factors could be considered:

(a) *Hiring, promotion and guarantee of status*, for example, merit-based hiring, promotion and dismissal based on objective criteria;

(b) *Working conditions*, for example, ensuring proper means to achieve and/or sustain adequate working conditions, including remuneration.

2. Measures to ensure proper management and transparency of legal persons

9. Measures could include establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons; establishment of proper criteria for disqualification of directors of legal persons; establishment of measures to ensure outside inspection, including, inter alia, establishment of the obligation to maintain proper accounts and application of proper sanctions against falsifications and intentional omissions; and development of proper codes of conduct for attorneys, notaries and accountants (see article 31 of the United Nations Convention against Transnational Organized Crime (the "Organized Crime Convention", General Assembly resolution 55/25, annex I)).

3. Government procurement and subsidies

10. Measures could be introduced to ensure transparency and fairness in procedures concerning government procurement, subsidies, authorization and approval.

4. Disclosure of information

11. Establishment of proper systems of disclosure of information, which contributes to the prevention of corruption, should be encouraged.

5. Public awareness

12. The convention should encourage promotion of public awareness regarding prevention of corruption and establishment of freedom of the media.

6. Judiciary and law enforcement agencies

13. Provisions to ensure independence of the judiciary and to establish fair and impartial law enforcement agencies could be introduced.

B. Criminalization and law enforcement

14. The points listed below should be considered in drafting the provisions regarding criminalization and law enforcement.

1. Basic principles

15. Since the primary objective of the planned convention should be to protect and enhance the integrity of democratic governance, the convention should focus primarily on the most basic and fundamental type of corruption, that is, bribery involving domestic public officials. Since bribery of public officials is already criminalized in almost all countries, steady and effective implementation of existing instruments is far more important than new legislation and creating new categories of criminalization.

2. Definition of bribery

16. The definition of the term "bribery" should follow the example of article 8, paragraph 1, of the Organized Crime Convention in order not to cause unnecessary confusion and the definition of the term "domestic public official" should best follow the example of paragraph 4 of that article.

3. Criminalization of bribery involving foreign public officials

17. Japan believes that bribery involving foreign public officials should be carefully considered.

18. In the case of active bribery, the issue is already covered by the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development.

19. In the case of passive bribery, if all States criminalize passive bribery of their own public officials, there will be no loopholes to begin with. In addition, passive bribery by foreign public officials may cause serious conflict with state immunity, as well as the privileges and immunities granted to members of diplomatic missions and consular posts. Effective investigation of and law enforcement against foreign public officials can be difficult in practice.

4. Criminalization of bribery involving officials working in international organizations

20. The privileges and immunities of officials of international organizations should be taken into consideration because of their special nature. It should also be borne in mind that effective investigation of and law enforcement against officials of international organizations can be difficult in practice because of their privileges and immunities. By the same token, the definition of the term "official of an

international organization" should also be considered carefully and the issue of jurisdiction should be examined.

5. Criminalization of bribery involving officials of political parties

21. The structure and legal status of political parties as well as their political and social influence may differ from country to country. In this sense, the question of bribery involving officials of political parties cannot be discussed on the same footing as that involving other officials. Therefore, Japan does not believe that this matter is suited to categorical and legal regulation by an international convention.

6. Criminalization of bribery in the private sector

22. Standard criminalization of all acts of bribery in the private sector without examining any distinction among them is not an appropriate approach.

23. The issue seems to contain two questions at different levels, firstly, the question of the treatment of private entities that provide public services but belong to the category of "private sector" can be addressed by defining "public official" following the example of article 8, paragraph 4, of the Organized Crime Convention. Secondly, as regards the real private sector, it should be borne in mind that the main target of the convention is corruption in the public sector and that criminalization in the private sector cannot be discussed in the same way as that in the public sector.

7. Corruption other than bribery

24. The word "corruption" is sometimes also associated with embezzlement, misappropriation and breach of trust. However, the protected legal interest of those crimes is property rights, while that of bribery is public integrity. Therefore, it is not appropriate to include such property crimes in the scope of the "corruption" in the planned convention.

8. Return of funds of illicit origin derived from corruption

25. The most difficult issue behind this question is how to settle complex and complicated issues regarding legitimate property rights over proceeds of corruption, in other words, how to keep the interests of bona fide third parties.

26. In addition, the question of state immunity and ways and procedures for implementing the return should be carefully considered.

9. Criminal procedures

27. In view of the difficulties of investigation and prosecution given the nature of bribery offences (which are usually committed privately or secretly), the introduction of the following criminal procedures could be considered:

(a) *Mitigation of punishment and immunity from prosecution*. It is necessary to consider whether or not provisions should be included regarding mitigation of punishment and immunity from prosecution;

(b) *Rules of evidence*. Provisions concerning admissibility of the record of examination of witnesses made in foreign countries could be included.

10. Assistance to and protection of victims

28. Although article 25 of the Organized Crime Convention provides for protection of victims, typical bribery cases involve no victims to whom compensation should be made and whose views should be presented in criminal proceedings. Japan therefore thinks that provisions dealing with assistance to and protection of victims should be considered carefully.

C. International cooperation

29. Provisions regarding exchange of information, assistance to developing countries, including technical assistance, cooperation with relevant international organizations, including development agencies, and implementation of the instrument and monitoring thereof could be considered.

Notes

[1] *Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), part two, chap. I, sect. A, draft resolution I).

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Proposals and contributions received from Governments

Austria and Netherlands: proposed text of the United Nations Convention against Corruption

United Nations Convention against Corruption

Preamble

[*The General Assembly*],

Concerned by the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Convinced that, since corruption is a phenomenon that currently crosses national borders and affects all societies and economies, international cooperation to prevent and control it is essential,

Convinced also of the need to provide, upon request, technical assistance designed to improve public management systems and to enhance accountability and transparency,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in combating corruption and bribery,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the Council of Europe, the

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European Union, the Organisation for Economic Cooperation and Development and the Organization of American States,

Welcoming multilateral initiatives to combat corruption, including, inter alia, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1977,[1] the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,[2] the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,[3] the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption, adopted by the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997,[4] the Manila Declaration on the Prevention and Control of Transnational Crime, adopted by the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Manila from 23 to 25 March 1998,[5] the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,[6] and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,[7]

[*Adopts* the United Nations Convention against Corruption]

[*Source:* General Assembly resolutions 51/59 and 53/176.]

I. General provisions

Article 1
Statement of purpose

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption and criminal acts related specifically to corruption more effectively;

(b) To promote, facilitate and support cooperation among States Parties in the fight against corruption.

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[1] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[2] See E/1996/99.

[3] *Official Journal of the European Communities*, C 195, 25 June 1997.

[4] E/CN.15/1998/6/Add.1, chap. I.

[5] E/CN.15/1998/6/Add.2, chap. I.

[6] Council of Europe, *European Treaty Series*, No. 173.

[7] Ibid., No. 174.

Article 2
Use of terms

[*To be completed.*]

"Public official"

"Legal person"

"Property"

"Proceeds of crime"

"Freezing or seizure"

"Confiscation"

"Predicate offence"

"Preventive measures"

etc.

Article 3
Scope of application

This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of corruption and criminal acts related specifically to corruption, irrespective of whether they involve public officials or have been committed in the course of business activity.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

[*Source:* Article 4 of the United Nations Convention against Transnational Organized Crime (the "Organized Crime Convention").]

II. Preventive measures

Article 5
National integrity strategy and policies

1. Each State Party shall develop a national anti-corruption strategy to ensure that the necessary measures are nationally coordinated, in both planning and implementation.

2. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to corruption and criminal acts related specifically to corruption.

3. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of corruption and criminal acts related specifically to corruption.

4. Each State Party shall, in accordance with its domestic law, establish bodies suitable to fight corruption, such as:

(a) A national anti-corruption agency to survey the national anti-corruption strategy referred to in paragraph 1 of this article;

(b) A public service commission and ombudsman.

5. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing and implementing a national integrity strategy. Such information shall contain the name and address of bodies referred to in paragraph 4 of this article.

6. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This shall include participation in international projects aimed at the prevention of corruption and criminal acts related specifically to corruption.

[*Source:* Article 31, paragraphs 1, 4, 6 and 7, of the Organized Crime Convention (with slight changes).]

Article 6
Public administration

States Parties shall endeavour to adopt, maintain and strengthen:

(a) Systems of government hiring of public officials that ensure openness, equity and efficiency;

(b) Systems based on objective criteria, for open and merit-based hiring and promotion of public officials;

(c) Systems for thorough screening of public officials for sensitive positions;

(d) Systems establishing adequate salaries and harmonization of payments and facilitating efficient job rotation;

(e) Education and training programmes for public officials to enable them to meet the requirements of the correct, honourable and proper performance of public functions.

[*Source:* Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials proposed at the Global Forum on Fighting Corruption: Safeguarding Integrity among Justice and Security Officials, held in Washington, D.C., from 24 to 26 February 1999 (excerpts).]

Article 7
Code of conduct for public officials

1. Each State Party shall agree to apply within its own institutional and legal system standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and shall mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions.

2. States Parties shall endeavour to incorporate into those standards the elements mentioned in the International Code of Conduct for Public Officials that appears in the annex to this Convention.

3. In addition, each State Party shall also, where appropriate, establish measures and systems to require public officials:

(a) To report to appropriate authorities acts of corruption committed in the performance of public functions;

(b) To make a declaration to appropriate authorities with respect to any gift or benefit obtained in the course of their duties and functions as public officials and any other employment or investment that may constitute a conflict of interest with respect to their functions as public officials.

4. States Parties shall create, maintain and strengthen mechanisms to enforce the standards established in accordance with paragraphs 1 and 3 of this article. In this respect, States Parties shall consider adopting where appropriate and in accordance with the fundamental principles of their domestic law, disciplinary measures against public officials who violate those standards.

[*Source*: Article III, paragraphs 1 and 2, of the Inter-American Convention against Corruption (with changes).]

Article 8
Public procurement and public financial management

1. Each State Party shall take the necessary steps to establish procurement rules based on transparency, openness and competition. Such rules shall include, inter alia:

(a) Public distribution of information on both tenders and awarded contracts;

(b) Use of predetermined and objective selection criteria and bidding rules, incorporating appropriate threshold values; and

(c) The requirement to base public procurement decisions on objective and transparent reasons in order to facilitate the subsequent verification of the correct application of the rules.

2. Each State Party shall take all relevant measures to ensure:

(a) The existence of and compliance with transparent procedures for the management of public finances, including the preparation and approval of the national budget; and

(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances; and

(c) Adequate powers of remedy in the case of failure to comply with the requirements established in accordance with this paragraph.

Article 9
Public reporting

Each State Party shall take the necessary measures to establish appropriate systems for public reporting. Those systems may include:

(a) Reporting requirements for government departments and agencies;

(b) Publication of annual government reports.

Article 10
Funding of political parties

1. Each State Party shall adopt, maintain and strengthen measures and regulations concerning the funding of political parties. Such measures and regulations shall serve:

(a) To prevent conflicts of interest and the exercise of improper influence;

(b) To preserve the integrity of democratic political structures and processes;

(c) To proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and

(d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.

2. Each State Party shall regulate the simultaneous holding of elective office and responsibilities in the private sector so as to prevent conflicts of interest.

[*Source:* Paragraph 1 is based on paragraph 8 of the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption; paragraph 2 has been taken from conclusion 12 of the Third European Conference of Specialized Services in the Fight against Corruption, organized by the Council of Europe in Madrid from 28 to 30 October 1998.]

Article 11
Private sector

1. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for engaging in corruptive practices, involving one or more legal persons incorporated within their jurisdiction, through appropriate legislative, administrative or other measures. Those measures should focus on:

(a) Strengthening cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) Establishing an adequate supervisory framework for financial institutions, based on the principles of transparency, accountability and sound corporate governance and with appropriate capacity for international collaboration on cross-border financial transactions;

(d) Preventing the misuse of legal persons for corruption or criminal acts related specifically to corruption, inter alia, through the establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to promote transparency and competition among companies incorporated within their jurisdiction, by avoiding any such regulations as may be redundant or prone to misuse as a result of corruption.

3. Each State Party shall deny the tax deductibility of bribes, the latter being one of the constituent elements of the offences established in accordance with article 14 or 15 of this Convention.

[*Source:* Paragraph 1 is based on article 31, paragraph 2, of the Organized Crime Convention (amended); paragraph 2 reflects the principle of deregulation; paragraph 3 reflects the principle expressed in the 1996 Recommendation of the Council of the Organisation for Economic Cooperation and Development (OECD) on the Tax Deductibility of Bribes to Foreign Public Officials.]

Article 12
Accounting

1. In order to combat corruption effectively, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the establishment of off-the-book accounts, the making of off-the-book or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of committing any of the offences established in accordance with article 14, 15 or 16 of this Convention or of hiding such offences.

2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

[*Source:* Article 8 of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (with slight changes).]

Article 13
Civil society

Each State Party shall take appropriate measures within its means to promote an active civil society and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The role of civil society should be strengthened by measures such as:

(a) Inclusion of the public in decision-making processes;

(b) Optimum access to information for the public and the media;

(c) Protection of "whistle-blowers" as set forth in article 23 of this Convention;

(d) Public support for networks of non-governmental organizations; and

(e) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.

[*Source:* Article 31, paragraph 5, of the Organized Crime Convention (with changes).]

III. Criminalization and law enforcement

Article 14
Criminalization of corruption involving a public official

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

[*Source:* Article 8 of the Organized Crime Convention (with changes).]

Article 15
Criminalization of corruption in the private sector

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of business activity:

(a) The promising, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or another person or entity, in order that he or she act or refrain from acting in the exercise of his or her duties;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or another person or entity, in order that he or she act or refrain from acting in the exercise of his or her duties.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with paragraph 1 of this article.

[*Source*: Paragraph 1 is based on articles 7 and 8 of the Criminal Law Convention on Corruption of the Council of Europe, although its language has been adapted to the terminology of article 8 of the Organized Crime Convention; paragraph 2 corresponds to article 8, paragraph 3, of the latter Convention.

Note. It should be realized, that this text extends the scope of the Convention considerably.]

Article 16
Criminalization of money-laundering of proceeds of corruption

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

3. For purposes of implementing or applying paragraph 1 of this article, each State Party shall include as predicate offences all offences established in accordance with this Convention.

[*Source:* Article 6 of the Organized Crime Convention (with changes).]

[*Article 17*]
Trading in influence

[*Note.* Article 12 of the Criminal Law Convention on Corruption of the Council of Europe contains a description of trading in influence as a criminal offence. It could be argued, however, that the general criminalization provisions above already cover most situations envisaged under that article. The concept is also vague and it may prove to be difficult to make a clear distinction between criminal and regular lobbying activities.]

Article 18
Liability of legal persons

1. Each State Party shall take such measures as may be necessary, in accordance with fundamental principles of its domestic law, to establish the liability of legal persons for participation in the crimes set forth in articles 14, 15 and 16 of this Convention.

2. In accordance with the fundamental principles of the domestic law of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

[*Source:* Article 10 of the Organized Crime Convention (with changes).]

Article 19
Specialized authorities

Each State Party shall take such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption. They shall have the necessary independence, in accordance with fundamental principles of the domestic law of the State Party, to be able to carry out their functions effectively and free from any undue pressure. Each State Party shall ensure that the staff of such entities has adequate training and financial resources to carry out their tasks.

[*Source:* Article 20 of the Criminal Law Convention on Corruption of the Council of Europe (with changes).

Note. This general article includes the important element of sufficient specialized personnel to fight corruption, as well as the requirement of necessary independence. If there were general agreement to do so, this provision could be extended to make reference to the creation, maintenance and strengthening of anti-corruption institutions or ombudsmen.]

Article 20
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 14, 15 and 16 of this Convention liable to criminal sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. States Parties shall consider the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction and the establishment of national records of persons thus disqualified from acting as directors of legal persons.

4. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

5. Each State Party shall, where appropriate, establish under its domestic law a statute of limitations period applicable to the offences established in accordance with articles 14, 15 and 16 of this Convention, which shall allow an adequate period of time for the investigation and prosecution of these offences. That period of time shall be longer in cases where the alleged offender has evaded the administration of justice.

6. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials or international civil servants. In determining the criminal sanction to be imposed, the national criminal courts may, in accordance with fundamental principles of their domestic law, take into account any disciplinary sanction already imposed on the same person for the same conduct.

7. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

[*Source:* Article 11 of the Organized Crime Convention; paragraph 4 has been taken from article 31, paragraph 3, of the Convention; paragraph 6 is based on article 5, paragraph 2, of the European Union Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union.]

Article 21
Confiscation and seizure

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable c nfiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 33 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with fundamental principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

[*Source:* Article 12 of the Organized Crime Convention.]

Article 22
Cooperation with and between national authorities

Each State Party shall take such measures as may be necessary to ensure that public authorities, as well as any public official, cooperate, in accordance with its domestic law, with those of its authorities responsible for investigating and prosecuting criminal offences:

(a) By informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with articles 14, 15 and 16 of this Convention has been committed; or

(b) By providing, upon request, to the latter authorities all necessary information.

[*Source:* Article 21 of the Criminal Law Convention on Corruption of the Council of Europe.

Note. Although the Organized Crime Convention does not contain a specific article on cooperation with and between national authorities, it seems legitimate to follow the example of the Council of Europe in the case of the offences under consideration. In order to fight corruptive practices, it is essential that all material be made available for purposes of investigation and prosecution. In that regard, mention can be made of the need for close cooperation with, inter alia, financial authorities.]

Article 23
Protection of "whistle-blowers" and witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for "whistle-blowers" and witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the "whistle-blower" or witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

[*Source:* Article 24 of the Organized Crime Convention (with slight changes).]

Article 24
Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

2. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from persecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Protection of such persons shall be as provided for in article 23 of this Convention.

[*Source:* Article 26 of the Organized Crime Convention.]

Article 25
Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over offences established in accordance with articles 13, 14 and 15 of this Convention when:

(a) The offence is committed in whole or in part in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory.

3. For the purposes of article 26 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

[*Source:* Article 15 of the Organized Crime Convention.

Note. Consideration could be given to including in this part of the Convention references to administrative measures. In particular, reference could be made to the suspension or revocation of licences or permits issued by the Government and to temporary or permanent disqualification with respect to bids on government contracts.]

IV. International cooperation

Article 26
Extradition

1. This article shall apply to the offences covered by this Convention, where the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. Each State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidenciary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment of all stages of the proceedings, including enjoyment of all the rights

and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

[*Source:* Article 16 of the Organized Crime Convention.]

Article 27
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

[*Source:* Article 17 of the Organized Crime Convention.]

Article 28
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention, where victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 18 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic

channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedure specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult

with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe

conduct shall cease when the witness, expert or other persons having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

[*Source:* Article 18 of the Organized Crime Convention.]

Article 29
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

[*Source:* Article 21 of the Organized Crime Convention.]

Article 30
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to corruption and criminal acts related specifically to corruption committed through the use of modern technology.

[*Source:* Article 27 of the Organized Crime Convention (with slight changes).]

Article 31
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

[*Source:* Article 19 of the Organized Crime Convention.]

Article 32

Collection, exchange and analysis of information on the nature of corruption and criminal acts related specifically to corruption

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in corruption and criminal acts related specifically to corruption in its territory, the circumstances in which these offences are committed, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning corruption and criminal acts related specifically to corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. States Parties shall consider monitoring their policies and actual measures to combat corruption and criminal acts related specifically to corruption and making assessments of their effectiveness and efficiency.

[*Source:* Article 28 of the Organized Crime Convention (with slight changes).]

Article 33

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 21, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 21, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 21, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 21, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 28 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 28, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

[*Source:* Article 13 of the Organized Crime Convention.

Note. The contents of this article offer the first elements for a solution to the problem of international cooperation in the case of transfer of embezzled public funds to a foreign country. Consideration could usefully be given to additional elements, which would, for example, accelerate procedures (priority treatment or direct contact between enforcement authorities; establishment of a clearing house; and inclusion of "abuse of power by members of the Government" as an additional offence).]

Article 34
Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to article 21 or 33, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 33 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime, return such proceeds of crime or property to their legitimate owners or, in the case of embezzled public funds, return it to the relevant public funds.

3. When acting on the request made by another State Party in accordance with articles 21 and 33 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 36, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against corruption;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

[*Source*: Article 14 of the Organized Crime Convention, with a slight change to paragraph 2 in order to include embezzled public funds.]

Article 35
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other

instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(d) Collection of evidence;

(e) Control techniques in free trade zones and free ports;

(f) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(g) Methods used in combating corruption and criminal acts related specifically to corruption, committed through the use of computers, telecommunication networks or other forms of modern technology; and

(h) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussions on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

[*Source:* Article 29 of the Organized Crime Convention (with slight changes).]

Article 36

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption and criminal acts related specifically to corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight corruption and criminal acts related specifically to corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption and criminal acts related specifically to corruption.

[*Source:* Article 30 of the Organized Crime Convention (with slight changes).]

V. Final provisions

[*To be completed.*]

Article 37
Signature and accession

Article 38
Ratification and depositary

Article 39
Entry into force

Article 40
Amendment

Article 41
Denunciation

Article 42
Monitoring and follow-up

Annex

International Code of Conduct for Public Officials

I. General principles

1. A public office is a position of trust, implying a duty to act in the public interest. Therefore, public officials shall act solely in terms of the public interests of their country as expressed through the democratic institutions of government. They shall not do so in order to gain financial or other material benefits for themselves, their family or their friends.

2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them. In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office shall make choices on merit.

II. Conflict of interest and disqualification

4. Public officials shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.

5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.

6. Public officials shall not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.

7. Public officials shall at no time improperly use public funds, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.

8. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

III. Accountability

9. Public officials are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

10. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and dependants.

IV. Openness

11. Public officials should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

V. Confidential information

12. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

VI. Political activity

13. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in their ability to perform their functions and duties in an impartial manner.

[*Source:* General Assembly resolution 51/59, annex, supplemented with elements taken from the Nolan Principles Governing Conduct of Public Office Holders (United Kingdom, 1999).]

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Proposals and contributions received from Governments

Austria and United Kingdom of Great Britain and Northern Ireland: working paper on key prevention elements to be included in the United Nations Convention against Corruption

I. Introduction

1. The present paper tries to provide a structure for a possible chapter on prevention within the United Nations Convention against Corruption for consideration by the Informal Preparatory Meeting. The paper draws on existing international instruments, such as the Council of Europe conventions, the 1996 Inter-American Convention against Corruption of the Organization of American States, the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development, as well as the 1999 Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption, the Anti-Corruption Tool Kit produced by the United Nations and information from Transparency International.

II. Prevention

A. National policy coherence

Rationale

2. Tackling corruption requires a holistic approach. Successes against corruption in one respect can be undermined or negated by failure to address other areas, in particular where corruption is endemic in a country. Where such conditions prevail, Governments need to ensure a coherent and strategic approach.

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Proposal

3. The convention should encourage States to take action, to the extent necessary, to ensure that measures to tackle corruption are coherent and coordinated, both in planning and implementation--including, where appropriate, the development of a national anti-corruption strategy.

B. The public service

1. Strengthening public service management

Rationale

4. The public service is fundamental to good governance. Holders of public office (including elected officials and in particular ministers) should act solely in terms of the public interest. They should not do so in order to gain undue benefits for themselves, their families or their friends. The keystones of public service are selflessness, integrity, neutrality/objectivity, accountability, openness, honesty and leadership. Corruption flourishes where the public service lacks such an ethos, where public servants are poorly remunerated and where appointments are not based on objective professional merit. Governments need public services that are merit-based, ethical, professional and non-partisan, managed with appropriate recruitment and retention systems (including adequate pay) and transparent arrangements for promoting ethical conduct (including codes/rules of conduct and asset declaration where the potential for conflicts of interest arises) and appropriate sanctions for breaches.

Proposal

5. The convention should require Governments to take the necessary measures to ensure that the management of the public service shall be on the basis of fundamental principles of public service (as specified either in the body of the convention or by way of a protocol). The convention should also require Governments to adopt measures to reduce existing or future opportunities for corruption within the public service. Such measures could focus on, inter alia:

(a) Use of a merit-based system for recruitment and promotion;

(b) Adoption, implementation and enforcement of a code of conduct for the public service (see A/AC.261/IPM/4, annex);

(c) Asset declarations by public servants in cases of potential conflict of interest;

(d) Job rotation systems;

(e) Adequate salaries;

(f) Requirement to report corruption cases;

(g) Education and training programmes for public servants to enable them to meet the requirements of the correct and honourable fulfilment of public functions;

(h) Establishment of a public service commission;

(i) Ombudsmen;

(j) Administrative measures (for example, appropriate public service disciplinary arrangements; withdrawal of licences or permits; disqualification or suspension).

2. Efficient delivery of public services

Rationale

6. Any strategy against corruption needs to address the question of bribes attached to public services, in particular as this is the "face" of corruption that members of the public will be exposed to most often. Efforts need to be made to reduce the opportunity for bribes in relation to services through measures aimed at keeping discretion to a minimum and improving the management and delivery of such services.

Proposal

7. The convention should require States to take measures to reduce the opportunity for corruption in the delivery of services to the public. Measures could include, inter alia:

(a) Limiting individual discretion of officials with respect to decisions on services;

(b) Increasing the efficiency of the process for the delivery of services;

(c) Providing for an oversight and complaints mechanism with respect to the delivery of services.

3. Transparent public procurement

Rationale

8. Public procurement provides major opportunities for corruption, both active and passive. Corruption is more likely to occur in conditions where contracts can be awarded without transparent or competitive procedures, where there is limited availability of information on contracts or where other elements of due process, such as clear selection criteria and bidding rules, are not followed. There is a need for transparency and predictability in public procurement. The adoption of sanctions against contractors found to have acted corruptly also offers a potentially significant deterrent effect.

Proposal

9. The convention should require Governments to take the necessary measures to ensure that all public procurement is undertaken by trained staff in accordance with transparent procurement rules, based on openness and competition to secure value for money, including, inter alia:

(a) Public distribution of information on contracts;

(b) Use of predetermined selection criteria and bidding rules.

4. Public financial management

Rationale

10. The management of public finances needs to be transparent and predictable, follow due process and be accountable. This includes all aspects of the budget process, key allocation decisions, the approval process, subsequent reporting and accounting and the timely and effective oversight by independent audit authorities.

Proposal

11. The convention should require Governments to take the necessary measures to ensure the existence of, and compliance with, transparent processes for the management of public finances, including:

(a) The preparation and approval of the national budget;

(b) Timely reporting on expenditure;

(c) Timely submission of accounts to oversight authorities, which should have a status and independence sufficient to ensure effective and objective scrutiny and, where necessary, adequate powers of remedy.

5. Impartial, effective and reliable judiciary

Rationale

12. An impartial, effective and reliable judiciary is essential to tackle corruption. The judiciary needs to be able to enjoy adequate autonomy while being accountable. There needs to be transparency and predictability in all aspects of the judicial process.

Proposal

13. The convention should require Governments to take appropriate measures to reduce any opportunities for judicial corruption, consistent with preserving judicial independence.

C. Business/commerce

1. Corporate governance

Rationale

14. A sound framework of corporate governance for private sector business activity is an essential part of the national economic management architecture, encourages propriety in business practices and, in particular, helps to provide transparency and accountability at the interface between the private sector and the public sector.

Proposal

15. The convention should require Governments to take the necessary measures to ensure an adequate framework for corporate governance in the private sector, including:

(a) Arrangements for the registration of companies (and for such registers to be open to public scrutiny);

(b) Internationally accepted standards of accounting, reporting and audit;

(c) Systems for investigation by the relevant authorities when appropriate;

(d) Development of standards and procedures to safeguard integrity, such as codes of conduct for professions, in particular, lawyers, notaries public, tax consultants and accountants.

2. Financial sector regulation

Rationale

16. Government's responsibility to ensure a sound regulatory framework for the financial sector is also an essential prerequisite for protection against corruption in financial transactions. This should embrace the private sector and parastatals.

Proposal

17. The convention should require Governments to take the necessary measures to ensure an adequate supervisory framework for financial institutions based on the principles of transparency, accountability and sound corporate governance; and appropriate supervisory institutions (with adequate autonomy, capacity, powers and penalties), with appropriate capacity for international collaboration on cross-border financial transactions.

D. Civil society

Involving civil society

Rationale

18. Responsible scrutiny of public bodies and services by organizations outside government contributes to strengthening accountability, raises the likelihood that corruption will be exposed and provides a voice for those who may otherwise have no, or limited, avenues for redress. An active and responsible civil society, including a free media, should be regarded as an ally of government in helping it to deliver outcomes sought by the public.

Proposal

19. The convention should require Governments to take measures to enable civil society, where appropriate, to engage with and contribute to relevant mechanisms and processes that seek to ensure accountability in public life and services. In addition, Governments should take measures to promote public information activities that contribute towards non-tolerance of corruption, as well as programmes of public education, including through school curricula.

20. The role of the civil society can be strengthened by:

(a) Including the public in decision-making processes;

(b) The existence of public reporting systems (that is, ensuring that public bodies have appropriate obligations for public reporting—and systems for doing so—including legislation establishing rights to access to information);

(c) Protection of whistle-blowers;

(d) Public support for networks of non-governmental organizations.

E. Holders of public elected office

Rationale

21. The integrity of all individuals elected to public office is a prerequisite for the conduct of good government. Holders of elected office at all levels should be subject to appropriate forms of scrutiny that can ensure honesty and accountability.

Proposal

22. The convention should require Governments to establish and maintain appropriate systems for the scrutiny of elected public officials. These may include:

(a) Declaration of assets;

(b) Ombudsmen;

(c) Parliamentary oversight committees.

F. Political party funding

Rationale

23. Transparent funding of political parties is essential to guard against corruption within the political process and among high-level government officials. Rules need to be clear, and abided by.

Proposal

24. The convention should require Governments to take the necessary measures to ensure appropriate rules for political party funding that serve to, inter alia, prevent conflicts of interest and the exercise of improper influence; preserve the integrity of political structures and processes; prevent the use of funds acquired through illegal and corrupt practices to finance political parties; and enshrine the concept of transparency in the funding of political parties. Measures may include:

(a) Requiring the declaration of donations exceeding a specified limit;

(b) Ensuring the existence of effective means to adjudge complaints and enforce remedies;

(c) Establishing a code of conduct for political parties;

(d) Requiring clear accounting and book-keeping requirements, as well as the requirement to publish finances.

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Argentina: proposed elements for inclusion in the draft United Nations Convention against Corruption

1. The Government of Argentina considers that, in view of the complex nature of corruption, particular importance should be given both to preventive strategies and to measures to punish corrupt practices. In that respect, the diversity of the ways in which corruption manifests itself should lead countries to consider incorporating systems and mechanisms that make it possible to exercise adequate control over public management and decision-making.

2. Within the list of preventive measures and strategies, emphasis should be placed on those which facilitate access to information, increase transparency in government decisions and qualitatively improve the processes that involve government spending, in particular public contracting, and make it possible to establish precise guidelines for ensuring that the public sector is not subjugated to private interests, as occurs in cases of conflict of interests and other similar situations.

3. It should be pointed out that this is not an exhaustive list of measures, actions and strategies. On the other hand, many of these measures, actions and strategies and other alternatives have already been included in the Inter-American Convention against Corruption (see E/1996/99) and other international legal instruments.

4. Corrupt practices usually occur in systems with inappropriate levels of discretionary authority, lack of transparency in decision-making processes and weak institutional controls. The purpose of the aforementioned measures and strategies is to address those shortcomings by reasonably curtailing the discretionary authority of public officials, increasing transparency in the decision-making process through the explanation of proposed legislative acts and creating institutions that permit monitoring by society at large.

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5. In considering those ideas, Argentina would particularly like to include the elements below in the text of the future United Nations Convention against Corruption:

1. Establishment of systems that improve public access to information on acts of State

6. Citizens' access to information is an indispensable part of the monitoring of public acts. In that regard, there should be a system of broad and easy access to information.

International instruments that contain provisions relating to this point:

Final Declaration of the Global Forum on Fighting Corruption and Safeguarding Integrity II, held in The Hague from 28 to 31 May 2001 (para. 11).

2. Implementation of mechanisms that increase transparency in government decision-making

7. Argentina proposes the incorporation of decision-making mechanisms that allow for the participation of interested parties, the general public, non-governmental organizations and other sectoral entities, through systems that provide for consultations and discussions on draft decisions with a view to increasing the democratic nature of administrative decisions.

International instruments that contain provisions relating to this point:

Resolution (97) 24 of the Council of Europe on the Twenty Guiding Principles for the Fight against Corruption (para. 9).

3. Establishment of systems to monitor funds that the public sector allocates to political organizations, civic associations, foundations or other non-public persons

8. The principal financial source of state assistance to private entities is the taxes paid by citizens and a fundamental question in that regard is the possibility of monitoring the allocation and use of such funds.

International instruments that contain provisions relating to this point:

(a) Resolution (97) 24 of the Council of Europe on the Twenty Guiding Principles for the Fight Against Corruption (para. 15);

(b) Final Declaration of the Global Forum on Fighting Corruption and Safeguarding Integrity II (para. 12).

4. Implementation of systems to improve transparency and the appropriate use of public funds in public contracting

9. Argentina is in favour of creating mechanisms that permit the broad participation of market players in contracting processes. The systems should function from the various stages of preparing the bidding documents up to the selection of a contractor. In the contracting process, priority must be given to adequate publicity in order to ensure the widest possible competition in the bidding.

International instruments that contain provisions relating to this point:

(a) Inter-American Convention against Corruption (art. III);

(b) Resolution (97) 24 of the Council of Europe on the Twenty Guiding Principles for the Fight against Corruption (para. 15).

5. Implementation of mechanisms to identify and prevent conflicts of interests among public officials

10. One of the principal concerns in the current stage of the fight against corruption should be to ensure adequate separation between the public and private spheres. Conflicts of interest result from the failure to differentiate between those two areas. In general, a conflict of interest occurs when, as a result of a decision taken by a public official, that official acquires an undue economic or financial benefit. It is the overlapping of the official's public functions with his private interests.

11. In order to ensure adequate preventive monitoring in that area, public officials should declare any commercial, economic and/or financial interests that might lead to conflicts of interest in the exercise of their official duties. In addition, legislation will have to provide adequate solutions to diverse cases and offer practical and effective remedies.

12. Such provisions should include the entire performance of the official during the exercise of his duties and should also take account of the relations that might arise once the public official has terminated his functions.

International instruments that contain provisions relating to this point:

(a) International Code of Conduct for Public Officials, sect. II (General Assembly resolution 51/59, annex);

(b) Inter-American Convention against Corruption (art. III);

(c) Recommendation of the Council of the Organisation for Economic Cooperation and Development of 23 April 1998, entitled "Improving Ethical Conduct in the Public Service".

6. System of sworn statements by public officials

13. One means of facilitating policies for preventing conflicts of interests, inconsistencies and possible illicit enrichment is to adopt a system of sworn

statements to be made by public officials. Such instruments should contain the information necessary to determine both changes in the official's economic status and a description of his or her interests in order to assess possible conflicts with his or her public functions.

International instruments that contain provisions relating to this point:

(a) International Code of Conduct for Public Officials, sect. III (General Assembly resolution 51/59, annex);

(b) Inter-American Convention against Corruption (art. III).

7. Follow-up mechanism

14. Bearing in mind the multilateral monitoring mechanism, Argentina believes that it is advisable to consider the possibility of developing a mechanism to follow up the implementation of the future convention. The mechanism, without prejudice to other components that may guarantee its effective operation, should adopt a system of indicators that objectively demonstrate progress made by States through measures, actions, policies or strategies in the field of transparency, governance and accountability.

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Proposals and contributions received from Governments

Sri Lanka: comments on the report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption

While agreeing in general with the views expressed by the various representatives speaking on behalf of the different groups of countries, Sri Lanka wishes to emphasize the following:

(a) The need for effective measures for the prevention and control of and fight against corruption in both the public and private sector, including the involvement of civil society, the training of civil servants, the establishment of mechanisms to protect whistle-blowers and the establishment of national independent anti-corruption bodies, criminalization of illicit enrichment and laundering of the proceeds of corruption; international cooperation, including exchange of information, training, extradition and mutual legal assistance; measures to prevent and fight the transfer of funds of illicit origin and the laundering of proceeds derived from corruption activities, as well as measures to facilitate the repatriation of such funds; technical assistance; and the establishment of a multilateral mechanism to monitor the application of the convention;

(b) The need to address active and passive corruption in the public sector as well as the private sector. There is also a need to address laundering of the proceeds of corruption and their seizure and confiscation as well as international cooperation in that regard;

(c) The need for a clear definition of corruption that cover both the private and the public sectors and to address the concept of corruption in the broadest sense possible;

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(d) The need to foster international cooperation with particular care that the integrity of domestic legal systems is not compromised and at the same time not allowing it to stand in the way of investigations of corruption in a third country and the need to be responsive to sovereign equality, territorial integrity and non-interference in the domestic affairs of States;

(e) Prevention was perceived by some delegations as including the promotion of integrity, transparency and good governance. It could also include development of codes of conduct or ethics, an effective and impartial civil service, effective systems for financing political parties, establishment of independent oversight bodies, free and transparent media, transparent public procurement rules, effective regulation of financial systems, an independent judiciary and the effective implementation of the rule of law. Prevention should also address the social and economic factors that are associated with corruption. The involvement and participation of civil society in preventing corruption and the promotion of public awareness is also stressed.

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Proposals and contributions received from Governments

Tunisia: proposals concerning the content of the draft comprehensive convention against corruption

1. There is a need to develop a definition for bribery (both active and passive acts committed by the briber and the person being bribed), as well as those involved (such as public officials and private persons) and proceeds derived from bribery (such as funds or donations).

2. Tunisia calls for the utilization of the content of existing relevant conventions, in particular the United Nations Convention against Transnational Organized Crime, signed at the High-Level Political Signing Conference, held in Palermo, Italy, from 12 to 15 December 2000, while avoiding both duplication and inconsistency or nonconformity between the provisions and mechanisms established by that Convention and the current draft convention.

3. Emphasis should be placed on promoting preventive measures among States, in particular those in need of capacity-building in this area. Such measures should deal with the following issues in particular:

(a) Promoting a sense of integrity among public officials and those involved, including individuals and institutions playing a regulatory role in that connection, and enhancing their reporting duties and capabilities;

(b) Urging States to enhance the financial and social status of public servants;

(c) Urging States to develop mechanisms for regulating the management of public funds and for introducing rules guaranteeing transparency in public transactions, both local and international;

(d) Urging States to review their domestic laws, including penal codes, to ensure that they reflect the gravity of the corruption phenomenon and its impact on development, and to introduce deterrent penal, civil, administrative and economic sanctions;

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(e) The acceptance of new types of evidence, such as electronic records, and the provision of the necessary means to protect "whistle-blowers" and witnesses.

4. The convention should urge States to promote international cooperation in judicial matters, especially in connection with extradition even in the absence of bilateral agreements, in the introduction of inspections and the confiscation of funds derived from acts of corruption, as well as the undertaking of criminal detection research and assisting the States concerned in prosecuting and penalizing such acts, and in improving the exchange of information and expertise in the work of competent authorities engaged in combating bribery crimes, while maintaining an appropriate level of independence and due sense of initiative.

5. The convention should cover the development of a rehabilitation programme for States suffering from the phenomenon of corruption that lack the necessary capacity for its control, detection and deterrence and urge the United Nations and other international organizations, especially financial institutions, to assist those States in overcoming poverty, which is a factor underlying the phenomenon, as well as to increase technical assistance, set up advisory projects and draft model laws.

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Proposals and contributions received from Governments

Turkey: comments for a convention against corruption

1. The most recent international legal instrument of a universal nature in the field of crime prevention is the United Nations Convention against Transnational Organized Crime (the "Organized Crime Convention", General Assembly resolution 55/25, annex I), which includes comprehensive provisions.

2. The structure and content of the provisions of the Organized Crime Convention should be taken as a model during the negotiation of a convention against corruption.

3. Focus should be placed on the provisions of a basic nature, such as "Definitions", "Scope of application", "Measures against corruption", "Confiscation and seizure", "Return of confiscated assets" and "Liability of legal persons".

4. Articles on cooperation, criminal proceedings and final clauses could be derived from the Organized Crime Convention.

5. The preparatory meeting to be held in Buenos Aires from 4 to 7 December should prepare a provisional timetable for the work of the Ad Hoc Committee for the Negotiation of a Convention against Corruption.

Proposal for the structure of a convention against corruption

6. Turkey proposes the following structure for the convention:

"Article 1
"Purpose

"The purpose of this Convention is to promote international cooperation to prevent and combat corruption.

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"Article 2
"Definitions

"(a) 'Undue advantage'

"(b) 'Public official' [article 8, para. 4 of the Organized Crime Convention]

"(c) 'International civil servant'

"(d) 'Whistle-blower'

"(e) 'Discretionary power'

"(f) 'Suspicious case'

"(g) 'Money-laundering'

"(h) 'Predicate offence'

"(i) 'Preparatory acts'

"(j) 'Property and proceeds'

"(k) 'Intermingled proceeds'

"(l) 'Bank secrecy'

"Article 3
"Scope of application

"This Convention shall apply to the prevention, investigation and prosecution of offences established in accordance with its article 4.

"Article 4
"Criminalization

[In addition to the crimes covered in article 8 of the Organized Crime Convention, active bribery, passive bribery, trading in influence, illicit enrichment, concealment of corruption, including fraudulent accounting transactions, and participation should be covered.]

"Article 5
"Measures against corruption

[A code of conduct for public officials could be included, to raise the awareness of the public concerning corruption and to obtain the support of non-governmental organizations in this respect. The code of conduct could cover the declaration of assets by public officials and by persons who are parties to public contracts, transparency in public contracts and objective rules of promotion in public employment.]

"Article 6
"Liability of legal persons

"Article 7
"Jurisdiction

"Article 9
"Sanctions and remedies

[Principle of proportionality; imprisonment, fines, bans on being a founder or shareholder of companies and financial institutions, bans on participating in public contracts.]

"Article 10
"Confiscation and seizure

"Article 11
"International cooperation for confiscation

"Article 12
"Return of confiscated assets

"Article 13
"Extradition

"Article 14
"Joint investigations

"Article 15
"Special investigation techniques

"Article 16
"Transfer of criminal proceedings

"Article 17
"Establishment of criminal records

"Article 18
"Law enforcement cooperation

"Article 19
"Training and technical assistance

"Article 20
"Financial assistance

"Article 21
"Prevention

"Article 22
"Implementation of the Convention

"Final clauses"

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Proposals and contributions received from Governments

France: elements for inclusion in the United Nations Convention against Corruption

1. The present contribution deals with some of the elements of the future convention contained in the draft resolution entitled "Terms of reference for the negotiation of an international legal instrument against corruption"[1] before the General Assembly at its fifty-sixth session. The contribution is therefore not a complete draft of the convention but essentially confines itself to the following points:

(a) Definitions;

(b) Prevention;

(c) Criminalization and sanctions.

2. The wording of several provisions takes into account the text proposed by Austria and the Netherlands (A/AC.261/IPM/4), in particular in the area of enforcement and prevention.

I. Definitions

3. With respect to definitions, France proposes the following article:

"Article (...)
"Use of terms

"For the purposes of this Convention:

"(a) 'Public official' shall mean any person holding a legislative, administrative or judicial office in a State Party, whether appointed or elected, and any person in the State Party exercising a public function, including for a public agency or public enterprise;

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"(b) 'Official of an international organization' shall mean:

"(i) Any official or other contracted employee, within the meaning of the code of conduct for public officials, of any public international, regional or supranational organization;

"(ii) Any person in the service of such an organization, whether seconded or not, who carries out functions equivalent to those performed by the officials or other servants of that organization;

"(c) 'Foreign State' shall include all levels and subdivisions of government, from national to local, and, in the case of federal States, the States and federated entities;

"(d) 'Foreign public official' shall mean any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign State, including for a public agency or public enterprise;

"(e) 'Property' shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

"(f) 'Proceeds of crime' shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

"(g) 'Freezing' or 'seizure' shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

"(h) 'Confiscation', which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

"(i) 'Predicate offence' shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 13 of this Convention;

"(j) 'Controlled delivery' shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence."

Comments

4. The definition of "public official" in subparagraph (a) is modelled on the definition of "foreign public official" in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD) (the "OECD Convention").[2] That definition was found preferable to the definition contained in article 8, paragraph 4, of the United Nations Convention against Transnational Organized Crime (the "Organized Crime Convention"),[3] which refers to the domestic law of the State party, since it provides a uniform and autonomous definition of "public official" and maintains a certain symmetry with the definition of "foreign public

official". That approach should make it possible to reduce differences in application among States Parties.

5. The definition of "international civil servant" in subparagraph (b) is taken from article 9 of the Criminal Law Convention on Corruption (the "Criminal Law Convention"),[4] of the Council of Europe amended on the basis of the definition of "Community official" in article 1 of the 1997 Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union.[5]

6. The definition of "foreign State" in subparagraph (c) is taken from article 1 of the OECD Convention. It has been expanded to include federal States.

7. The definition of "foreign public official" in subparagraph (d) is taken from article 1 of the OECD Convention.

II. Prevention

A. Proposed amendments

8. The proposals below supplement the proposed text submitted by Austria and the Netherlands, subject to the necessary terminological changes and without prejudice to the negotiations that will be held in the Ad Hoc Committee for the Negotiation of a Convention against Corruption.

1. Public administration

9. France considers that it would be useful to add the following two paragraphs to article 6 of the text proposed by Austria and the Netherlands:

> "2. States Parties shall take such measures as may be necessary to ensure that public officials and civil servants receive specialized, specific and appropriate training concerning the risks of corruption to which they may be exposed by virtue of their functions and the supervisory missions and investigations for which they are responsible.
>
> "3. The States Parties shall consider, while respecting the basic principles of their domestic law, taking such measures as may be necessary to adopt and implement systems for declaring the income of persons who perform specific public functions and, where appropriate, to make such declarations public."

Comments

10. Paragraph 2 supplements the other provisions of the article by including the obligation to provide training for officials exposed to the risk of corruption.

11. Paragraph 3, which invites States parties to provide for the obligation of declaring income when such a measure seems appropriate, is inspired by the Inter-American Convention against Corruption.[6]

2. Code of conduct for public officials

Article 7

12. France considers that it would be useful to supplement article 7 of the text submitted by Austria and the Netherlands with several provisions that specify the scope of the article. France proposes the addition of the following provisions:

> "0 [*To precede paragraph 1*]. States Parties shall endeavour, in particular through the preparation of adequate guidelines, to promote ethical behaviour and to foster a culture of rejection of corruption through respect for public honesty, the proper exercise of responsibilities and the development of integrity."
>
> "3 bis. Each State Party shall take such measures as may be necessary to ensure that no prejudice is caused to or sanction taken against public officials who report to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an illegal or criminal activity, including those involving the public service."
>
> "5. For the purposes of implementing the provisions of this article, States Parties shall take account of the relevant initiatives of regional, interregional and multilateral organizations."

Comments

13. Paragraph 0 is inspired by on the Twenty Guiding Principles for the Fight against Corruption (the "Twenty Guiding Principles")[7] of the Council of Europe and contains a principle that is enlarged upon in subsequent provisions.

14. Paragraph 3 is based on article 12 the Model Code of Conduct for Public Officials[8] of the Council of Europe and reinforces the obligation to report acts of corruption, as referred to in paragraph 3 (a).

15. The wording of paragraph 5 is based on article 7, paragraph 3, of the Organized Crime Convention and refers to such regional initiatives as those of the Council of Europe.

3. Management of public administration

16. France proposes the addition of several provisions to articles 8 and 9 of the text submitted by Austria and the Netherlands.

Article 8

17. Article 8 could be supplemented as follows:

(a) The following words could be added to paragraph 2 (b): "in particular by higher administrative and financial oversight bodies";

(b) It might be useful to add the following provisions:

> "3. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities with a view to preventing corruption.
>
> "4. Each State Party shall take such measures as may be necessary, within the framework of its domestic law on public accounting, to prohibit the

establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

"5. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions or falsifications in respect of the books, records, accounts and financial statements of administrations and public entities.

"6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations takes into consideration the consequences of acts of corruption committed by public officials."

Comments

18. Paragraph 3 is inspired by the Inter-American Convention against Corruption.

19. Paragraphs 4 and 5 are inspired by the OECD Convention and reflect the need for minimum standards in the area of public accounting.

20. Paragraph 6 is inspired by the Twenty Guiding Principles.

Article 9

21. Article 9 could be supplemented by a general paragraph inspired by the Twenty Guiding Principles, to read as follows:

"0 [*To precede paragraph 1*]. States Parties shall take such measures as may be necessary to ensure that the organization, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring, as regards access to information, as much transparency as is consistent with the need to achieve effectiveness."

4. Preventive measures in the private sector

22. France believes that the provisions of articles 11 and 12 of the text submitted by Austria and the Netherlands could be expanded.

Article 11

23. The scope of article 11, paragraph 1, could be made more precise and supplemented by provisions borrowed from the Organized Crime Convention. France therefore proposes the amendment of subparagraph (e) and the addition of subparagraph (f) below as follows:

"(e) Preventing the misuse of legal persons for committing or concealing acts of corruption by the adoption of measures concerning the identification of the constituents, holders of capital and shares, the identification of economic beneficiaries, registration obligations, advertising rules and, more generally, transparency in financial, legal and accounting transactions, inter alia, [...];

"(f) Preventing the misuse of procedures governing subsidies and licences granted by public authorities for commercial activity;"

Comments

24. Subparagraph (f) is inspired by the provisions of article 31, paragraph 2 (c), of the Organized Crime Convention. The provision concerning the transparency of legal persons has been expanded and made more precise.

Article 12

25. France proposes that article 12 be supplemented by provisions on the establishment of accounting controls, both within and outside enterprises. It proposes the following additional paragraphs:

> "3. Each State Party shall take such measures as are necessary to ensure that enterprises and commercial companies have sufficient internal accounting controls that make it possible to detect acts of corruption.
>
> "4. Each State Party shall take such measures as are necessary to ensure that accounting in enterprises and commercial companies is subjected to appropriate auditing and certification procedures, in particular by professionals or specialized enterprises approved by the public authority."

Comments

26. Paragraph 3 is inspired by the OECD Convention and the Inter-American Convention against Corruption.

27. Paragraph 4 seeks to supplement the provisions of article 12 with the obligation to provide for the auditing of the accounts of commercial enterprises.

5. Role of civil society and the media

Article 13

28. France proposes that article 13 of the text submitted by Austria and the Netherlands should be supplemented by a specific provision on freedom of the press.

29. Such a provision, based on the Twenty Guiding Principles, could be worded as follows:

> "2. States Parties shall guarantee to the media the freedom to receive, publish and disseminate information concerning cases of corruption, subject only to the limits required for the smooth operation of inquiries, with respect for the rules of conduct in force, the rights to defence and the presumption of innocence."

B. Additional provision

30. France proposes a specific provision to encourage the establishment of specialized multidisciplinary structures in the area of the prevention of corruption. Such a provision could be worded as follows:

"*Article* (...)
"*Specialized prevention structures*

"1. States Parties shall consider the establishment of specialized bodies to prevent corruption that are capable of developing multidisciplinary methods to increase knowledge about corruption and to classify acts of corruption.

"2. States Parties shall grant the specialized bodies referred to in paragraph 1 of this article independence and the material means and specialized staff, as well as the training that such staff may require to perform their functions.

"3. States Parties shall consider establishing or appointing, within their public administration, a contact point or service to which any natural or legal person may apply in order to obtain advice or to report information concerning acts of corruption."

Comments

31. This provision deals specifically with the prevention of corruption. Paragraphs 1 and 2 are based on the Twenty Guiding Principles and article 28 of the Organized Crime Convention. Paragraph 3 supplements the preceding provisions by ensuring a better flow of information.

III. Criminalization and sanctions

A. Criminalization

1. Criminalization of corruption

32. With regard to the corruption of national public officials, France is in favour of using the provisions of article 8, paragraph 1 (a) and (b), of the Organized Crime Convention as a basis for negotiations. The same constituent elements contained in those provisions could also be used with respect to the corruption of foreign public officials.

33. With regard to the corruption of international civil servants, France proposes the inclusion in the draft convention of the following article:

"*Article* (...)
"*Corruption of international civil servants and members or representatives of an international organization*

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article (...) of this Convention [active corruption of a national public official], involving an international civil servant, a member of a parliamentary assembly of an international organization or holders of judicial office or officials of an international court.

"2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article (...) of this Convention [passive corruption of a national public official], involving an international civil servant, a member of a parliamentary assembly of an international organization of which the State Party is a member

or holders of judicial office or officials of an international court whose jurisdiction is accepted by the State Party."

Comments

34. This article is inspired by article 8, paragraph 2, of the Organized Crime Convention, but has been fundamentally amended in order to create an obligation rather than a simple option. Moreover, the text has been expanded by examples drawn from articles 10 and 11 of the Criminal Law Convention with a view to taking account of cases that would not be covered by the definition of "international civil servant".

35. Moreover, the condition relating to a State Party's membership of a parliamentary assembly or an international organization and the condition relating to the acceptance of international jurisdiction have been deleted with respect to active corruption but retained with respect to passive corruption, which makes possible a partial broadening of the scope of criminalization.

2. Criminalization of money-laundering

36. With regard to the criminalization of money-laundering, France is in favour of the wholesale incorporation of the relevant provisions of article 6 of the Organized Crime Convention. The proposal submitted by Austria and the Netherlands could therefore be supplemented by the incorporation of the provisions of article 6, paragraph 2, of that instrument.

3. Other criminalization

37. With regard to other criminalization, France proposes the incorporation into the draft convention of the following articles:

"*Article* (...)
"*Trading in influence*

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

"(a) The promising, offering or granting, directly or indirectly, of any undue advantage in order to obtain from a public official or any other person, whether or not he or she abuses his or her real or supposed influence with a view to obtaining from an administration or a public authority of the State Party any undue advantage or any favourable decision for himself or herself or for any other person;

"(b) For a public official or any other person, the soliciting or accepting, directly or indirectly, of any undue advantage for himself or herself or for another person, through the abuse of his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party any undue advantage or any favourable decision for himself or herself or for any other person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result."

Comments

38. This provision is based on article 12 of the Criminal Law Convention, with considerable changes. Criminalization, which deals both with trading in active

influence and trading in passive influence, is deliberately confined to actions committed against or for an administration or a public authority of the State party. At the present stage, trading in influence (active and passive) for a foreign public authority has not been taken into account.

"*Article* (...)
"*Misappropriation of property by a public official*

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the misappropriation or removal of any movable or immovable property, public or private funds or securities or any other object entrusted to him by virtue of his position or his mission."

Comments

39. The wording of this article is inspired by article XI of the Inter-American Convention against Corruption. Criminalization is confined to national public officials.

"*Article* (...)
"*Concealment*

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the concealment, possession or transmission of movable property or funds or the serving as an intermediary in the transmission of such property or funds, when he or she is aware that such movable property or funds are the result of one of the offences established by this Convention."

Comments

40. The criminalization of concealment is provided for in article VI, paragraph 1 (d), of the Inter-American Convention against Corruption, but the elements that constitute the crime are not mentioned. The proposed wording seeks to make criminalization more precise.

"*Article* (...)
"*Account offences*

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

"(a) Creating or using an invoice or any other accounting document or record containing false or incomplete information;

"(b) Unlawfully omitting to make a record of a payment."

Comments

41. This provision is based on article 14 of the Criminal Law Convention. However, the obligation to criminalize is not confined to acts committed with a view to committing, facilitating or concealing acts of corruption, which would limit the scope of criminalization and would raise a difficulty with respect to evidence.

"*Article* (...)

"*Complicity, instigation or attempt*

"1. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation as an accomplice or instigator in an offence established in accordance with articles (...) of this Convention.

"2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with articles (...) of this convention."

Comments

42. Paragraph 1 is inspired by article 8, paragraph 3, of the Organized Crime Convention and supplemented by wording drawn from instruments dealing with the protection of the European Communities' financial interests. The scope of this provision should cover all the offences established by the convention.

43. Paragraph 2 provides for the criminalization of attempted offences. Its scope should exclude the offences of corruption, trading in influence and concealment, owing to the particular elements that constitute such offences. It would therefore be sufficient to consider all the articles on criminalization with the exception of those which deal with the aforementioned specific offences.

B. Other sanctions

44. As regards other sanctions, all of the other penal measures should be preceded by a general provision, which could be worded as follows:

"*Article* (...)

"*Measures against corruption*

"Each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials."

Comments

45. This general provision incorporates part of article 9, paragraph 1, of the Organized Crime Convention, which has been slightly amended. Paragraph 2 has not been retained in so far as the relevant provisions could be incorporated and at the same time made more precise with respect to law enforcement agencies and prevention.

46. In addition, the proposals below should be included in the draft convention.

1. Prosecution, adjudication and sanctions

Article 20

47. On this point, France proposes the incorporation of article 20 of the proposal submitted by Austria and the Netherlands, with the addition, after paragraph 1, of a

provision to limit the scope of immunities and jurisdictional privileges. This provision could be based on the Twenty Guiding Principles and worded as follows:

"1 bis. Each State Party shall take such measures as may be necessary to limit any immunity and any jurisdictional privilege with respect to the investigation, prosecution and adjudication of offences involving corruption to what is strictly necessary for the smooth functioning of a democratic society."

2. Jurisdiction

48. With regard to the criteria for jurisdiction, France is in favour of the wholesale incorporation of the relevant provisions of the Organized Crime Convention, including the provisions of article 15, paragraph 2 (c) (ii).

Article 25

49. Moreover, article 25 of the text submitted by Austria and the Netherlands could be supplemented by a provision that allows the State party to establish its jurisdiction when the acts have been committed by one of its public officials (who are not necessarily nationals of that State) and by a provision relating to the special status of international civil servants.

50. France therefore proposes that the following provisions should be added to article 25, paragraph 2, of the text proposed by Austria and the Netherlands:

"(c) The offence involves one of its public officials or any person referred to in article 8 who is at the same time one of its nationals;

"(d) The offence is one of those established in accordance with article (...), paragraph 1 (b) (ii), of this Convention [*article 6, paragraph 1 (b) (ii) of the United Nations Convention against Transnational Organized Crime*] and is committed outside its territory with a view to the commission within its territory of an offence established in accordance with article (...), paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention [*article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of the United Nations Convention against Transnational Organized Crime*]."

Comments

51. Paragraph 2 (c) is inspired by article 17 of the Criminal Law Convention.

52. Paragraph 2 (d) incorporates the provision of article 15, paragraph 2 (c) (ii), of the Organized Crime Convention.

3. Special investigative techniques

53. France proposes the addition of a provision encouraging States Parties to implement the special investigative techniques to curb acts of corruption and other offences established by the convention.

"*Article* (...)
"*Special investigative techniques*

"1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the

use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating corruption.

"2. For the purpose of investigating the offences established by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

"3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

"4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part."

Comments

54. This article incorporates the provisions of article 20 of the Organized Crime Convention.

4. Protection of victims

55. France proposes the inclusion in the draft convention of a provision on the protection of the rights and interests of victims, which could be justified by the nature of the offences established by the future instrument and the diversity of legal systems:

"*Article* (...)
"*Protection of victims*

"1. Each State Party shall ensure that its domestic law takes account of the need to combat corruption and provides, in particular, effective remedies for persons whose rights and interests are affected by corruption in order to enable them to obtain, in accordance with the principles of its internal law, compensation for damages.

"2. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence."

Comments

56. This article is based on article 25 of the Organized Crime Convention, paragraph 1 of which has been deleted. The wording of paragraph 1 of the proposed

text is less precise than paragraph 2 of article 25 of that Convention and is inspired by the Twenty Guiding Principles.

5. Measures to enhance cooperation with law enforcement authorities

57. France is in favour of the wholesale incorporation of the relevant provisions of the Organized Crime Convention, including the provisions of article 26, paragraph 5.

Article 24

58. In addition, France considers that it would be useful to add to article 24 of the draft submitted by Austria and the Netherlands a general provision encouraging the provision of information to the law enforcement authorities established by the convention. This additional provision, which would be inserted before paragraph 1 without replacing it, could be worded as follows:

> "0 [*To precede paragraph 1*]. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established by this Convention to supply information useful to competent authorities for investigative and evidentiary purposes."

6. Final provisions

59. Without prejudice to the other final provisions of the convention, in particular the follow-up mechanism, France considers that the draft should contain a specific provision that defines the relations between the future instrument and other conventions.

60. France proposes the following text:

> "*Article* (...)
>
> "*Relationship to other agreements and arrangements*
>
> "1. This Convention shall not affect the rights and undertakings derived from international multilateral conventions.
>
> "2. States Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
>
> "3. If two or more States Parties have already concluded an agreement or arrangement in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or arrangement in lieu of this Convention, if it facilitates international cooperation."

Comments

61. This provision is based on article 39 of the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime[9] of the Council of Europe; paragraph 1 has been slightly amended. The aim of the provision is to maintain the commitments undertaken by States in other international instruments.

Notes

[1] See *Official Records of the Economic and Social Council, 2001, Supplement No. 30*, part two, chap. I, sect. A, para. 1.

[2] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[3] General Assembly resolution 55/25, annex I.

[4] Council of Europe, *European Treaty Series*, No. 173.

[5] See *Official Journal of the European Communities*, No. C 195, 25 June 1997.

[6] See E/1996/99.

[7] See Council of Europe, *Texts adopted by the Committee of Ministers of the Council of Europe, 1997*, Strasbourg, France, 1998, resolution (97) 24.

[8] See *Official Gazette of the Council of Europe: Committee of Ministers part-volume*, No. V, May 2000, recommendation R (2000) 10.

[9] Council of Europe, *European Treaty Series*, No. 141.